

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1265 – SB 1286

March 20, 2013

**SUMMARY OF ORIGINAL BILL:** Requires health insurance policies to cover screening, diagnosis, and treatment of autism spectrum disorder. Prohibits an insurer from terminating coverage, or refusing to deliver, execute, issue, amend, adjust, or renew coverage to an individual solely because the individual is diagnosed with or has received treatment for an autism spectrum disorder. Autism spectrum disorder is defined as any of the pervasive developmental disorders or autism spectrum disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders. Health insurance policy is defined as any individual, group health insurance policy, every policy or contract issued by a hospital or medical service corporation, every individual or group service contract issued by a health maintenance organization, and every self-insured group arrangement to the extent not preempted by federal law that is delivered, issued for delivery, or renewed in this state on and after January 1, 2014, that provides hospital, surgical, or medical expense insurance or coverage.

Treatment for autism spectrum disorder is defined as evidence-based care and related equipment prescribed or ordered for an individual diagnosed with an autism spectrum disorder by a licensed physician or a licensed psychologist who determines the care to be medically necessary, including but not limited to behavioral health treatment. Applied behavior analysis is included in the definition of behavioral health treatment.

A health insurance policy cannot subject coverage of autism spectrum disorder to any limits on the number of visits an individual may make for treatment or to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to physical illness generally under the policy. Except for inpatient services, an insurer will have the right to review an insured's treatment plan for autism spectrum disorder annually, unless the insurer and the insured's treating physician or psychologist agree that a more frequent review is necessary. The cost of obtaining any review or treatment plan will be borne by the insurer.

To the extent that the coverage required by this bill exceeds the essential health benefits required under the federal Patient Protection and Affordable Care Act, Public Law 111-148, the specific benefits that exceed the required essential health benefits will not be required of a qualified health plan when the plan is offered in this state through the Tennessee exchange by a health carrier. The coverage requirements apply to group insurance offered under Title 8, Chapter 27, Part 2, but do not apply to accident-only, specified disease, hospital indemnity, Medicare supplement, long-term care, or other limited benefit hospital insurance policies. The bill is not to be construed as affecting any obligation to provide services to an individual under an individualized education program, or an individualized service plan.

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## FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – Exceeds \$77,293,800/FY13-14  
Exceeds \$154,587,500/FY14-15 and Subsequent Years

Increase Federal Expenditures - \$144,593,900/FY13-14  
\$289,187,700/FY14-15 and Subsequent Years

Increase Local Expenditures - \$95,000/FY13-14\*  
\$190,000/FY14-15 and Subsequent Years\*

Potential Impact on Health Insurance Premiums (required by Tenn. Code Ann. § 3-2-111): Such legislation will result in an increase in the cost of health insurance premiums for autism benefits being provided by plans that do not currently offer these benefits at the proposed mandated levels. It is estimated that the increase to each individual's total premium will be between one and three percent. A one percent increase in premium rates could range between \$50 (single coverage) and \$140 (family coverage) and a three percent increase could range between \$154 (single coverage) and \$414 (family coverage) on average depending on the type of plan.

**SUMMARY OF AMENDMENT (005007):** Requires health benefit plans to cover diagnosis and treatment of autism spectrum disorder as provided by the bill on or after January 1, 2014. Autism spectrum disorder is defined as any of the pervasive developmental disorders or autism spectrum disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders including autistic disorder, Asperger's disorder, and pervasive developmental disorder not otherwise specified. Health benefit plan is defined as any group or blanket plan, policy, or contract for health care services issued or delivered in this state by health care insurers, including indemnity and managed care plans. TennCare, insurance policies offered under title 8, chapter 27, part 2, accident only, specified disease, hospital indemnity, Medicare supplement, long-term care, disability income, or other limited benefit health insurance policies are excluded from the definition of health benefit plan.

Treatment for autism spectrum disorder is defined as care prescribed, provided, or ordered for an individual diagnosed with an autism spectrum disorder by a licensed physician or a licensed psychologist who determines the care to be medically necessary and evidenced-based, including but not limited to applied behavior analysis when provided by a board certified behavior analyst and equipment determined necessary to provide evidence-based treatment. Treatment also includes any care for an individual with autism spectrum disorder that is determined by a licensed physician to be medically necessary and evidence-based. A board-certified behavior analyst is defined as an individual certified by the nationally accredited Behavior Analyst Certification Board, a nationally accredited nongovernmental agency that certifies individuals

who have completed academic, examination, training, and supervision requirements in applied behavior analysis.

Applied behavior analysis services must have an annual limitation of \$50,000 and be limited to children under 18 years of age.

Autism coverage required by the bill is not subject to any limits on the number of visits an individual may make to an autism services provider or dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than those that apply to a physical illness generally under a health benefit plan. Coverage for treatment cannot be denied on the basis that the treatment is habilitative in nature. The coverage may be subject to other general exclusions and limitations of the health insurance plan, including without limitation coordination of benefits, participating provider requirements, restrictions on services provided by family or household members, and utilization review of health care services including review of medical necessity, case management, and other managed care provisions. If an individual is receiving treatment for an autism spectrum disorder, an insurer is prohibited from request in a review of the medical necessity of the treatment for autism spectrum disorder to a greater extent than it does for other illnesses covered in the policy. The cost of obtaining the review must be borne by the insurer.

On or after January 1, 2014, to the extent that the bill requires the state to make payments under § 1311(d)(3)(B)(ii) of the Patient Protection and Affordable Care Act (PPACA), Public Law 111-148, as amended, the specific benefits that exceed the specified essential health benefits will not be required of a qualified health plan as defined in the PPACA.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

### **Increased State Expenditures – Not Significant**

**Potential Impact on Health Insurance Premiums (required by Tenn. Code Ann. § 3-2-111):** Such legislation will result in an increase in the cost of health insurance premiums for autism benefits being provided by plans that do not currently offer these benefits at the proposed mandated levels. It is estimated that the increase to each individual's total premium will be up to one percent. A one percent increase in premium rates could range between \$50 (single coverage) and \$140 (family coverage).

Assumptions for the bill as amended:


- The TennCare program and insurance plans offered under Title 8, Chapter 27 (plans administered by Benefits Administration) are excluded from application of the bill.
- The Department of Commerce and Insurance is responsible for regulation of the provisions of the bill. Any cost can be accommodated within existing resources without an increased appropriation or reduced reversion.
- Federal 45 C.F.R. §155.70 authorizes a state to require a qualified health plan (QHP) to offer benefits in addition to the essential health benefits. If the state-required benefits

are in addition to the essential health benefits, then the state must make payments to defray the cost of the additional required benefits to an enrollee or directly to the QHP issuer on behalf of the enrollee.

- It is assumed that the state will not be subject to an increase in expenditures related to the mandated benefits under this rule. The bill expressly states that any benefits required by the bill that exceed the specified essential health benefits will not be mandated for QHPs.
- Documentation of this interpretation has not been received from the Department of Commerce and Insurance.
- According to the Centers for Disease Control (CDC), the prevalence of autism spectrum disorders is one in 88 children at the age of eight according to the CDC Autism and Developmental Disabilities Monitoring Network. The CDC states that most individuals are diagnosed with an autism spectrum disorder by this age.
- Private sector health insurance premium impact: The provisions of the bill will result in an increase in covered individuals receiving benefits for autism spectrum disorders. Health insurance premiums will increase to cover the costs of the additional benefits.
- According to the *Health Insurance Mandates in the States 2010* report by the Council for Affordable Health Insurance (CAHI), the estimated cost to health insurance for autism benefits ranges from one to three percent of the total premiums nationwide. Based on a 2011 report by the Fiscal Review Committee staff, a one percent increase in premium rates will range between \$50 (single coverage) and \$140 (family coverage), and a three percent increase in premium rates will range between \$154 (single coverage) and \$414 (family coverage) on average depending on the type of plan.
- There have been later published estimates that anticipate lower increases in premiums. The Essential Health Benefits Bulletin published by the Center for Consumer Information and Insurance Oversight (CCIIO) in December 2011 estimates that autism mandates including ABA therapy with limits on coverage relative to annual dollar limits, annual lifetime or frequency limits, and/or age limits raises average premiums by approximately 0.3 percent based citing a California analysis of autism mandate legislation considered in that state. A 2009 actuarial analysis conducted by Oliver Wyman, a firm that provides actuarial cost estimates for legislation supported by Autism Speaks (an advocacy organization) throughout the country, estimated that legislation similar to this bill would increase premiums approximately 0.59 percent.
- A report concerning an autism mandate enacted in Missouri issued by the Missouri Department of Insurance, Financial Institutions and Professional Registration in February 2013 stated that the department could not make an exact assessment of the mandate on premium rates because the Department has no authority over health insurance rates and does not receive rate filings. The report did note that treatment for autism represented 0.2 percent of overall claim costs in the plans studied.
- It is estimated that the increase in Tennessee to each individual's total premium will be similar to those nationally and will range up to one percent, between \$50 (single coverage) and \$140 (family coverage) on average depending on the type of plan.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in dark ink, appearing to read "Lucian D. Geise". The signature is stylized with a large "L" and "G". To the right of the main signature, there is a smaller, less legible handwritten mark that could be "KMD".

Lucian D. Geise, Executive Director

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